1948 on a loan by you from me, has expired and the said loan unpaid. Therefore, in accordance with the terms of the said agreement houses Nos. 435 and 436 automatically belongs to me.

"Please be good enough as to vacate and give up possession of the said houses, otherwise, legal proceedings will be instituted against you, without further notice."

It is therefore quite clear from the subsequent behaviour of the defendant that the transaction is one in which, as Lord Esher, M.R., pointed out in *Madell v. Thomas & Co.*[1], the Bills of Sale Acts are required for the protection of the borrower.

I hold, therefore, that the documents P1 and P2 amount to a Bill of Sale under section 3 of the Enactment and, as they are not in the prescribed form or registered, are void and the whole transaction between the parties is void.

The plaintiff is entitled to the declaration asked for in para 14(a), (b) and (c) of the plaint, i.e.:—

"(a) An order adjudging the aforesaid deed of assignment and agreement of loan as void in law . . . .

(b) An order that the Assistant Registrar do send a copy of the order made herein to the President, Town Board, Kluang, for recording same in the Record Book of rateable holdings and another copy to the Collector of Land Revenue, Kluang.

(c) An injunction against the defendant to restrain him from taking action against the plaintiff for alleged arrears of rent and/or ejectment proceedings in respect of the annexe to house No. 436, Jalan Mersing, Kluang . . ."

With regard to para 14(d) of the plaint, it is admitted that the defendant has done some repairs to the two houses and has paid certain sums for assessment and fees to the Town Board, Kluang, and is therefore entitled to the money expended by him on such items, and I order an enquiry before the Assistant Registrar to ascertain (1) the amount due to the plaintiff from the defendant as compensation for the use and occupation of the houses Nos. 435 and 436, Jalan Mersing, by the defendant, and (2) the amount due from the plaintiff to the defendant for the amount expended by him on repairs and for assessment and fees to the Town Board, Kluang, in respect of the said houses.

With regard to para 14(e) of the plaint, I order that the $686.08 be repaid to the plaintiff or her Solicitor.

I make an order in terms of para 14(f) of the plaint, i.e. for possession of the said houses, and for costs of this suit and I order that the costs of the enquiry before the Assistant Registrar be reserved until his certificate comes before this Court on further consideration.

Judgment for the plaintiff.

CHENG SIAK HOW v. PUBLIC PROSECUTOR

[A. Cr. J. (Hill, J.) July 13, 1953]

[Alor Star — Criminal Appeal No. 58 of 1952]

Excise — Opium and Chandu Proclamation, No. 49 of 1946, s. 7(2) — Evidence — Admissibility of — Similar fact — Conduct.

In this case the appellant was charged with the importation into the Malay Peninsula of 5789⅜ lbs. of opium of a value of not less than $1,000,000. The learned Sessions Judge admitted certain evidence given by accused No. 12 and P.W. 15 who were accomplices.

Held: (1) the evidence given by P.W. 15 that the appellant's name was written on the envelope of the letter could not be admitted as evidence against the appellant; (2) the evidence of accused No. 12 should not have been taken into consideration as it was not part of the case of the prosecution and was against the appellant; (3) the payment of the $400 for the delivering of the letter, the possession of the ½ of a dollar note and the celebration at Penang are all admissible as evidence against the appellant; (4) the opium labels found in the appellant's cabinet are also admissible as evidence; (5) although the learned trial judge has erred in the manner he did there is no substantial miscarriage of justice and that there was sufficient evidence to prove beyond all reasonable doubts that the appellant was concerned in the importation of opium.

Cases referred to:—

(1) *Harris v. Director of Public Prosecutions* (1952) 1 All E.R. 1044.

(2) *Makin v. Attorney-General of New South Wales* (1894) A.C. 57.

(3) *Noor Mohamed v. R.* (1949) A.C. 182.

(4) *R. v. Straffen* (1952) 2 All E.R. 657.

(5) *Thomson v. The King* (1918) A.C. 221;

(5) *R. v. Rodley* (1913) 3 K.B. 468.

CRIMINAL APPEAL.

F. G. Charlesworth, M. N. Cumarasami and *Matthews Killam* for the appellant.

F. G. Cooke (Federal Counsel) for the respondent.

Hill, J.: — In November last the appellant was convicted in the Sessions Court, Alor Star, of the following charge:—

"That you on or about the 8th day of June 1952 were concerned in the importation into the Malay Peninsula of 5789⅜ lbs. of opium of a value of not less than $1,000,000 which were seized on board the Burmese motor vessel 'Shwe Hla Min' at Pulau Paya, in the District of Langkawi, in the State of Kedah on the 8th day of June, 1952, and you thereby committed an offence under section 7(2)(b) of the Opium and Chandu Proclamation 49/46 and punishable under section 7(2) of the said Proclamation."

The appellant was sentenced to one year's rigorous imprisonment and to a fine $2,000,000 or two years rigorous imprisonment and has appealed against the conviction and sentence.

I do not propose to relate the facts at all fully, but will set out facts which appear to be established and undisputed from the evidence.

On June 7, 1952 a motor vessel named the "Shwe Hla Min" anchored in territorial waters off the Kedah coast. The vessel contained a cargo of opium of over 5,000 lbs and valued about $1,000,000. Two members of the crew, who were subsequently to be P.W. 15 and 19, landed on an island and met some fishermen on June 8, 1952. They arranged with two of the fishermen to deliver a letter addressed to the Hup Seng Kongsi in Sungei Patani for a reward of $400. The fishermen (P. W. 21) and (P.W. 22) were given a chit by P.W. 19 entitling them to claim the $400 on delivery of the letter.

The fishermen arrived at the Kongsi in Sungei Patani on the Sunday morning to find that no one responsible was in charge. A young man took them to No. 34A Jalan Sekerat where the Manager and Cashier of the Hup Seng Kongsi lived and where the appellant rented a room for his family. The appellant worked in Penang but spent most weekends with his family in Sungei Patani.

Neither the Manager nor the Cashier could be found, but the appellant, who had taken his children out for coffee, was found in a trishaw and was brought to No. 34A. He was a sleeping partner in the Hup Seng Kongsi. He was handed the letter and the chit by the fisherman and, perhaps reluctantly, opened the former and read it.

The appellant then telephoned to one Teoh Geik Seng, a known smuggler, who was at the Modern Hotel, Penang. As a result of this 'phone call Teoh Geik Seng came to Sungei Patani. Either before or after his arrival the appellant borrowed $400 from a friend (subsequently D.W. 3) in Sungei Patani and paid the two fishermen. The appellant stated that his reason for getting in touch with Teoh Geik Seng was because there was a sealed envelope addressed to him in the letter appellant received from the fishermen.

The appellant, Teoh Geik Seng and the fishermen then drove in Teoh Geik Seng's car to Tanjong Dawai where Teoh Geik Seng and the two men alighted. The appellant drove the car back to Penang.

In due course Teoh Geik Seng met P.W. 15 and 19. He gave P.W. 15 half of a dollar note and a Tiger Balm paper which he initialled. He then returns to Penang, goes to appellant's work place and repays the $400. The two men make a night of it and end up in the Modern Hotel in the early hours of the morning apparently intoxicated.

When Teoh Geik Seng returned the next day to the rendezvous with the P.W. 15 and 19 the vessel could not be found. It had by then been seized by the authorities and taken to Penang. The game was up and Teoh Geik Seng took flight. He has not been seen since.

On June 10, 1952 the appellant was interviewed by Customs Officers at 34A Jalan Sekerat, Sungei Patani, and in his wallet was found half of a one dollar note. Also found locked in a cabinet in his room was a bundle of labels which are described by the Customs as being "Black Dog Rangoon Opium Labels."

In the meanwhile P.W. 15 and 19 had been apprehended or had given themselves up and on June 11, 1952 the Tiger Balm paper and the half dollar note given by Teoh Geik Seng to P.W. 15 were taken from P.W. 15. The numbers on the two half dollar notes seen in appellant's wallet and taken from P.W. 15 corresponded.

These then are the events and happenings which are established and indeed not in dispute.

In convicting the appellant the learned trial judge went further. With regard to the half note in his possession the appellant had explained that he got it back from D.W. 3 on June 9, 1952 when he repaid the $400 he had borrowed the day before. The appellant stated that it was the same money Teoh Geik Seng had given him the night before in Penang and that the half note was in a fold of $10 bills and was returned to him by D.W. 3. This explanation the learned President rejected.

The President further held that it was a fact that appellant's name was written on the envelope handed by P.W. 15 to the fishermen. He believed and accepted the evidence of P.W. 15 and stated that even if he had found no corroboration he would still have accepted this accomplice's evidence.

It is very evident too that the finding of the labels influenced the learned President and he was also influenced against the appellant by the evidence of accused No. 12.

Here and now I must state that there are two grounds in the President's judgment with which I disagree and in which I consider he erred. The first is his finding as a fact that appellant's name appeared on the envelope. I think in the circumstances it was too unsafe to accept P.W. 15's evidence in this respect. Much of the other evidence left this question very uncertain and it is significant that when the fishermen arrived in Sungei Patani with the letter it was not the appellant who was looked for, but the manager and cashier of Hup Seng Kongsi. This fact to a great extent negatives the suggestion that appellant's name was on the letter and certainly in my view places the question in such doubt that a definite finding such as the learned President's was not justified.

And then, I consider the learned President was wrong with respect to the evidence of accused 12. This evidence was not part of the case for the prosecution, and should not have been taken into consideration as it was against the appellant.

I must now consider whether the evidence regarding the finding of the labels in appellant's room was admissible. The admission of evidence of similar facts is one of the most difficult subjects of the criminal law and the principles which should guide the Court, though frequently laid down by the highest courts, are often difficult to apply to particular cases.

I can add nothing useful by attempting a further exposition on the subject. Indeed, I feel it would be presumptuous of me to try and do so. All I can do is to consider the question in relation to this case in the light of the judgments in *Harris v. Director of Public Prosecutions*[1]; *Makin v. Attorney-General for New South Wales*[2], *Noor Mohamed v. R.*[3]; *R. v. Straffen*[4]; *Thomson v. The King*[5]; *R. v. Rodley*[6] etc.

Mr. Charlesworth for the appellant submitted that the finding of the labels was similar to the finding of house-breaking tools in the house of a person charged with burglary where there was no evidence of breaking or of the method of entry. Evidence of such finding being inadmissible. It would, of course, be admissible if there was evidence of breaking by similar tools. Mr. Charlesworth argued that the labels in no way connected appellant with the offence and only showed on the worst interpretation a propensity for the offence of trafficking in opium. Mr. Charlesworth's arguments were persuasive, but in my view the evidence of the finding of the labels was admissible and relevant both to show *mens rea* and to rebut the obvious defence of innocent and fortuitous participation. In a statement to the Customs Officer, Exhibit P-28, the appellant had explained that the labels had been brought from school some time before by his children. I consider there are as good reasons for admitting this evidence as there were for admitting the photographs in *Thomson v. The King*[5] cited above.

If one disregards the possibility of the appellant's name being on the envelope addressed to Hup Seng Kongsi and the evidence of accused 12, as I repeat I consider the trial judge should have done, is there enough left to justify the conviction allowing for the prejudice that must have been wrongfully created in the President's mind? In other words, excluding the above, was the evidence sufficient to prove beyond reasonable doubt that the appellant was concerned with this importation of opium?

It may well be that the appellant's presence in Sungei Patani on the 8th June was fortuitous. Though rejected by the trial judge it is just possible that his explanation of his possession of the half dollar note was true. It could conceivably have happened that way. There still remains, however, direct and unexplained evidence which appears capable of only one interpretation.

Who would pay $400 for delivering a letter, involving a journey of a few hours, if an ordinary, honest business deal was involved? Why did the appellant concern himself, on his Sunday off with his family, with summoning Teoh Geik Seng from Penang and with the borrowing of $400? Why the spree with Teoh Geik Seng in Penang? What was there to celebrate? Why drive to Tanjong Dawai for Teoh Geik Seng "to go to sea" and thence take the car to Penang? All these activities in which the appellant took part willingly point directly to his being concerned with the importation of the opium. And then, locked away in his room and found at a time when he still probably did not know of the seizure of the vessel is a bundle of opium labels, which he admitted in Court receiving from and keeping for Teoh Geik Seng. A contradiction of the explanation given by him in Exhibit P-28.

On this evidence alone I do not consider that it can be said that there is any reasonable doubt that the appellant knowingly concerned himself with this ill-fated smuggling venture.

It is unfortunate that the learned trial judge erred in the manner he did, but I hold the view that no injustice was done thereby for though the learned President was undoubtedly prejudiced by his acceptance of the evidence of P.W. 15 with regard to the superscription on the envelope and by the evidence of accused No. 12, I consider that there was ample evidence besides this, not only to justify the conviction, but from which no other inference could reasonably be drawn but of the appellant's guilty participation.

The appeal is dismissed.

Appeal dismissed.

HARDIAL SINGH & ORS.
v.
MALAYAN THEATRES LTD.

[P. C. (Lord Porter, Lord Tucker, Mr. T. Rinfret (Chief Justice of Canada) and Mr. L. M. D. De Silva) July 20, 1953]

[Privy Council Appeal No. 16 of 1952]

Landlord and Tenant — Recovery of premises — Business premises — Alternative accommodation —